



Australian Institute
of Landscape Architects
1966/2016

6 May 2016

Review of the Native Vegetation Clearing Regulations
Regulatory Strategy and Design
Department of Environment, Land, Water and Planning
PO Box 500
East Melbourne VIC 8002

Submission by:

AUSTRALIAN INSTITUTE OF LANDSCAPE ARCHITECTS

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To whom it may concern

Re: Review of Native Vegetation Clearing Regulations - Consultation Paper

The Australian Institute of Landscape Architects (AILA) Victorian Chapter provides the following submission in response to the Review of Native Vegetation Clearing Regulations - Consultation Paper (the Review) from the Department of Environment, Land, Water and Planning (DELWP).

AILA is the peak body for the landscape architecture profession in Australia. Representing over 2,500 members, we champion a landscape of liveability and quality design for our public realm, open spaces, communities and greater environmental stewardship. Our membership covers a diverse range of professional and creative services including strategic planning, urban design, open space design and natural resource management working across all levels of government and within the private sector. AILA's Charter stresses that urban and rural landscapes are vital parts to the Australian quality of life and that the condition of the landscape influences the economic, social and environmental health of the nation.

AILA's response to the Review includes general comments about the current policy and regulations and more detailed responses to the six key issues and proposed improvements outlined in the consultation paper.

General Comments

The role of native vegetation is important for a variety of reasons, namely for ensuring biodiversity and long term survival of habitat and wildlife. It also plays a critical role in our environment and communities. Yet sadly from 1990-2000 Australia was the only developed first world economy to rank in the top 20 land-clearing nations, rating sixth highest in the

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world¹. For Victoria, only 46 percent of the original vegetation cover remains making it the most cleared state in Australia². More specifically, the original Victorian Volcanic Plains grasslands and woodlands are critically endangered and less than 1% remain intact and in good condition³. Furthermore, according to the 2013 *Victorian State of the Environment Report*, damage and loss of native vegetation is still occurring.

Given these statistics and mounting issues such as climate change, population growth and land-use pressures, it is vital that appropriate measures are put in place to secure what is left of the State's native vegetation. AILA welcomes the Government's commitment to review and improve the current clearing regulations.

Consistent with AILA's submission to Department of Sustainability and Environment (DSE) in 2012 regarding the *Future Directions for Native Vegetation in Victoria Consultation Paper*, AILA's main concerns with current policy and regulations include:

- The main priority in assessing clearance must be protection of the biodiversity values. Relaxing regulations, reducing costs and minimising 'green tape' to benefit applicants should not be the main factor in assessing clearance.
- The priority should be to avoid and minimise clearing, and only allow offsets as a last resort. The shift from a 'net gain' objective to a 'no net loss' approach has undermined the priority to avoid and minimise habitat loss, and only allow offsets as a last resort.
- Any changes to the policy in terms of 'low risk' categorisation should ensure small sites with high value are retained.
- Site assessments should be a mandatory part of the process of classification of land and identifying habitat values. Removing requirements for site assessments and instead relying on a desktop modelling and mapping system provides overly simplified assessments of site qualities and reduces the ability to verify actual habitat values on site.
- Local Councils need more support and funding to administer the policy and undertake compliance and enforcement.
- Greater clarity is required regarding the application of policies to government, agencies, and public land managers, especially in situations where a body is the proponent and the responsible authority for issuing approvals.
- The offsetting market and administration needs significant improvement, to ensure offset sites achieve intended results.
- The policy should make provision for landscape dynamics that have major impacts on biodiversity (e.g. bushfires, drought and flooding) which will continue to increase as a result of climate change.

AILA provides the following feedback to the proposed amendments as well as identifying additional areas for consideration.

¹ David Lindenmayer and Mark A. Burgman, *Practical Conservation Biology* (Collingwood VIC: CSIRO Publishing, 2005), www.publish.csiro.au/onborrowedtime/docs/PCB_Ch09.pdf

² State of Victoria and Department of Sustainability and Environment, *Future Directions for Native Vegetation in Victoria: Consultation Paper* (2012): www.depi.vic.gov.au/_data/assets/pdf_file/0012/199668/Consultation_paper_NVR.pdf

³ Australian Government Department of the Environment, *Nationally Threatened Ecological Communities of the Victorian Volcanic Plain: Natural Temperate Grassland & Grassy Eucalypt Woodland* www.environment.gov.au/system/files/resources/e97c2d51-08f2-45e0-9d2f-f0d277c836fa/files/grasslands-victoria.pdf



1. Native vegetation clearing policy

AILA supports the policy aspiration of 'net gain' rather than the proposed 'no net loss' of native vegetation. The goal of the policy should not only be to protect, but also to increase and enhance native vegetation.

Proposal 1: AILA supports avoiding clearing of native vegetation as the policy's primary objective. However, the approach to 'avoid the removal of native vegetation *where possible*' requires clarification and guidance around what constitutes acceptable attempts to avoid removal and what evidence is required to prove these attempts. With more rigorous requirements to avoid removal, as well as objectives to achieve 'net gain', applicants are forced to develop innovative design solutions to work within existing constraints and enhance existing biodiversity values. This process can lead to far better outcomes than simply resorting to clearing and offsetting as a default approach.

Proposal 2: We agree there is need for additional guidance to assist Council decision makers when assessing applications for native vegetation removal including circumstances where Council are assessing their own projects. This includes consideration of the contribution individual sites make to overall green infrastructure of a city or town such as water quality, erosion or salinity control, visual amenity and social value.

Proposal 3: We agree it is important for DELWP to work with Councils to improve state-wide strategic planning for biodiversity, including planning overlays. This includes clarity around State and local government roles and responsibilities for required planning scheme development/amendments.

Proposal 4: We support improved monitoring and reporting of native vegetation assessments, clearing, exemptions, and offset agreements, to assess effectiveness of the regulations in achieving objectives. Ensure Councils are suitably supported and resourced to undertake the required enforcement, monitoring and reporting.

2. Permit process and decision making

Proposal 5: AILA fully supports reducing the 'low risk' pathway threshold.

Proposals 6, 7 and 8: We agree that technical and administrative changes are needed to improve efficiency and effectiveness of the regulations. This includes replacement of the location risk map with an improved map that includes highly localised habitats. Requiring all applications (not just moderate and high risk) to include statements about how clearing was avoided is supported; yet the policy should be clear about what evidence will suffice to support the avoidance statement. The inclusion of an offsetting strategy has merit however the feasibility of such a scheme should be investigated prior to implementation. Is it feasible to place an interim hold on an offset while an application is being assessed?

Proposals 9 and 10: We support providing improved guidance material to assist with preparing and assessing applications, to improve efficiency and understanding for Councils, as well as applicants and the general public. This includes clearer guidance for Councils about when applications can be refused and consolidating permit assessment pathways from three to two (a 'lower assessment pathway' and a 'higher assessment pathway'). Combining the existing 'moderate' and 'high risk' categories will remove ambiguity.



3. Biodiversity information tools used in decision making and offset rules

Proposals 12 and 13: AILA supports ongoing improvements to mapped and modelled information for native vegetation assessment, but has concerns with the reliance on high level mapping without on-site verification. Therefore we agree that maps need to be supplemented with more accurate on-site information. The circumstances in which this would be allowed should be clear and information used should be provided by a qualified ecological consultant. In addition, map users should be able to provide feedback regarding accuracy or usefulness of the maps. Should maps require updating or changes, there should be adequate support and training for Council assessors and map users.

Proposals 14 and 15: We support including more detailed information regarding habitat for dispersed species to assist with decision-making and offsetting requirements. This includes consideration of endangered EVCs and large old scattered trees with high habitat value. Adding this information would allow for greater recognition of ecological values, such as breeding or roosting sites and obligations to protect hollow-bearing trees.

4. Offset delivery

AILA supports the proposals outlined in this section to improve the offsetting system. It is promising that current offset requirements have resulted in many applicants opting for avoidance in the first instance and ultimately reducing their biodiversity impacts. As DELWP's survey of ecological consultants indicates (section 2.1.4), 82% of clients took steps to avoid and/or minimise impacts on native vegetation in order to reduce offset costs. This is in line with objectives outlined in Proposal 1 for native vegetation to be retained in its original location as a first priority. However, when clearing cannot be avoided, it is critical the system for offsetting is efficient, functional, and actually results in successful vegetation gain for the offset sites selected.

Proposal 16, 17 and 18: As other stakeholders highlighted in the consultation paper, the use and functionality of the Credit Register needs significant improvement. This includes more transparency and information about offset availability, tracking and reporting on offset delivery. Programs to increase market participation and collaborate with landholders are needed, to secure suitable offset sites and help address the currently low availability of offset site options. This will increase the likelihood that credits are available on the Credit Register and ensure applicants establish a known and agreed offset site before any clearing occurs. It is also agreed that all third party offsets should meet standards and be registered on the Credit Register so that credits and payments are tracked and to ensure the offset management plan is implemented.

Proposals 19 and 20: We agree that more comprehensive standards for revegetation are needed to ensure offsetting and revegetation delivers biodiversity objectives. This includes developing a more strategic approach in identifying offset sites and encouraging revegetation in areas connected to remnant vegetation. It also means establishing a framework for approving, implementing and monitoring for offsetting on Crown land. In principle this approach is supported as the consultation paper notes, 'some habitats may only exist on Crown land and therefore offsets for any clearing these habitats often need to be situated on Crown land' (pg.34). However the current processes for approvals and monitoring would need to be improved before such a change was implemented to ensure objectives are met.

5. Exemptions



Proposals 21, 22 and 23: AILA supports a review of the exemptions for removal of native vegetation. Not having a clear understanding of when or why the exemptions apply creates difficulty in enforcing the regulations and undermines the purpose of having a policy in the first place. It is agreed that a framework is needed to test applications against a formalised set of purposes and principles for exemptions. Also, to reword certain exemptions for greater clarity and to develop guidance material that explains what the exemptions intend to achieve.

AILA also notes that the list of species that are exempt needs to be updated. Exemptions should be avoided where proposed native vegetation removal involves significant species or habitats listed under the Flora and Fauna Guarantee Act and/or the Environment Protection and Biodiversity Conversation Act. It is also noted that the exemption for planted vegetation is based on the management of street trees that usually have renewal programs, and that this exemption should not be able to be applied more broadly to roadside vegetation.

Proposal 24: We support providing a clear, transparent and consistent approach to developing and implementing agreements referenced in the exemptions. This includes making information more publically available on agreements and allowing for community and Council consultation when developing the agreements. It should also address the issue of inconsistencies in agreements applicable to different authorities.

6. Compliance and enforcement

Proposals 25, 26 and 27: AILA supports improvements to enforcement and compliance as a high priority reform. As the consultation paper highlights, in some areas with low compliance, illegal native vegetation removal is significantly greater than that of permitted clearing. Therefore, it is important to identify and report on the causes of this, and work with Councils to develop effective mechanisms for improved monitoring and enforcement. This includes providing Council with the necessary support and resources to enable this. Agree that a compliance and enforcement strategy be developed which establishes a more proactive approach, rather than current reactive approach which has proven unsuccessful in preventing native vegetation removal. The strategy should also include community education and a preventative component aimed at reducing illegal removal.

Proposals 28 and 29: We agree that co-regulatory support and a review of the overarching compliance and enforcement framework is needed. The current enforcement framework is not an effective deterrent due to the high cost and time associated with seeking enforcement orders through VCAT. Co-regulatory support could be achieved by DELWP assisting Councils with enforcement or at VCAT, particularly for vegetation of high state-wide significance.

Other items

It is unclear if the exemptions associated with clearing around dwellings for bushfire protection and fence line maintenance are included for consideration in the review. In existing neighbourhoods and towns these provisions can enable a significant loss of habitat. Conversely adjoining properties which may not have an existing dwelling may be incapable of development due to the presence of vegetation which leads to fragmented outcomes.

The current legislation has its greatest implications for growth areas and regional communities. A holistic review of loss of habitat could include consideration of habitat within urban areas. It may be possible to introduce a scheme which takes a broader, longer term view of habitat



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creation whereby certain activities (such as tree removal) in urban areas is levied to fund habitat enhancement or creation within the municipality. Such approaches can be included in developer contribution schemes (where they exist) but the outcomes can be quite varied.

Conclusion

AILA aspires to protect and enhance our existing natural values and restore damaged landscapes; therefore we believe native vegetation clearing is a critical issue that requires thorough consideration and action. We look forward to seeing more detail about the proposed changes, and would like the opportunity to support our submission with a meeting with DELWP and key experts from AILA, who have extensive knowledge and experience in these issues from both the private consultancy and public agency perspective. Please contact AILA's Chapter Manager, Felicity McGahan on 0401 811 976 or felicity.mcgahan@aila.org.au if this would be beneficial.

Yours Sincerely

Emma Appleton
AILA Victoria President